



**UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

DATE PREPARED: February 18, 1982

RE: BARRETTSTOWN JOY FARM, CASE NO. 82-TLC-2

THIS PROCEEDING ARISES UNDER 20 C.F.R. § 655.200 et seq. THE EMPLOYER FILED AN APPLICATION FOR TEMPORARY LABOR CERTIFICATION ON NOVEMBER 18, 1981, FOR THE ALIEN TO BE EMPLOYED FROM JANUARY 15, 1982, TO JANUARY 14, 1985, AS A SHEEP UNIT MANAGER. THE APPLICATION WAS FORWARDED TO THE REGIONAL ADMINISTRATOR ON NOVEMBER 20, 1981. THE APPLICATION WAS RETURNED WITHOUT PROCESSING, BECAUSE THE REGIONAL ADMINISTRATOR FOUND THAT THE OCCUPATION WAS PERMANENT IN NATURE. ON JANUARY 8, 1982, EMPLOYER SUBMITTED INFORMATION CLARIFYING THE NATURE OF THE JOB OPPORTUNITY. THE APPLICATION WAS AGAIN FORWARDED TO THE REGIONAL ADMINISTRATOR ON JANUARY 14, 1982. THE APPLICATION WAS THEN DENIED ON THE BASIS THAT IT HAD NOT BEEN FILED WITHIN 80 DAYS OF THE ESTIMATED DATE OF NEED (i.e., JANUARY 15, 1982).

ON FEBRUARY 1, 1982, THE ABOVE-NAMED EMPLOYER APPEALED THE DENIAL OF TEMPORARY LABOR CERTIFICATION BY THE REGIONAL ADMINISTRATOR. THE APPEAL FILE WAS RECEIVED BY THIS OFFICE ON FEBRUARY 16, 1982.

SECTION 655.200(a) OF THE REGULATIONS STATES THAT AN EMPLOYER WHO WISHES TO HIRE AN ALIEN FOR TEMPORARY EMPLOYMENT MUST FILE AN APPLICATION INCLUDING A JOB OFFER FOR U.S. WORKERS WITH A LOCAL OFFICE OF THE STATE EMPLOYMENT SERVICE AGENCY, AND THAT SUCH APPLICATION SHOULD BE FILED A MINIMUM OF 80 DAYS BEFORE THE ESTIMATED DATE OF NEED IN ORDER TO ALLOW SUFFICIENT TIME FOR THE REQUIRED 60-DAY RECRUITMENT PERIOD FOR U. S. WORKERS. IF THE APPLICATION IS NOT TIMELY FILED, THE REGIONAL ADMINISTRATOR HAS THE DISCRETION TO EITHER DENY THE APPLICATION OR TO PERMIT THE PROCESS TO PROCEED WITH THE EMPLOYER RECRUITING WORKERS UPON SUCH TERMS AS WILL ACCOMPLISH THE PURPOSE OF THE REGULATIONS.

THE REGIONAL ADMINISTRATOR WAS WITHIN HIS DISCRETION TO DENY THE CERTIFICATION UNDER 20 C.F.R. § 655.200(a) AND 20 C.F.R. § 655.201(e), AS THE

EMPLOYER FILED ITS APPLICATION ONLY 58 DAYS BEFORE THE ESTIMATED DATE OF NEED. THE DENIAL OF THE CERTIFICATION WAS PROPER AND IS HEREBY AFFIRMED.

FURTHER REVIEW MAY BE OBTAINED BY FILING A PETITION WITH THE DISTRICT DIRECTOR, IMMIGRATION AND NATURALIZATION SERVICE, IN YOUR GEOGRAPHIC AREA PURSUANT TO 8 C.F.R. § 214.2(h)(3)(i). THIS DECISION IS BEING TRANSMITTED TO THOMAS E. HILL, ACTING REGIONAL ADMINISTRATOR OF THE U.S. EMPLOYMENT SERVICE; DAVID O. WILLIAMS, ADMINISTRATOR OF THE U.S. EMPLOYMENT SERVICE; AND THE DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE.

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